IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

## No. 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

*vs.*

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY; A. E. STALEY MANUFACTURING COMPANY,

*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

## BRIEF FOR A. E. STALEY MANUFACTURING COMPANY.

C. C. LE FORGEE,
LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
*Attorneys for Intervener-Appellee.*

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

## INDEX.

## Cases Cited.

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

## No. 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

*vs.*

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY; A. E. STALEY MANUFACTURING COMPANY,

*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

## BRIEF FOR A. E. STALEY MANUFACTURING COMPANY.

### OPINION BELOW

The opinion of the statutory District Court (Judges Briggle, Lindley and Evans) is in the printed record (R. 134-139) and is reported in 51 F. Supp. 141. The particular report of the Interstate Commerce Commission here involved (R. 17-46) is reported 245 I.C.C. 383.

## JURISDICTION AND STATUTE INVOLVED

The jurisdiction of this Court is set forth in the brief for appellants, also in the brief for appellees, the railroad companies who were plaintiffs below. The same may be said as to the pertinent provisions of the Interstate Commerce Act. In the interest of brevity those matters will not be repeated herein. Provisions of the State and Federal grain inspection laws (to which reference is made in Sec. II of Argument) are reproduced in appendix hereto.

## QUESTIONS PRESENTED

The ultimate question is the validity of the Interstate Commerce Commission's order (R. 46) of May 6, 1941, in that body's suspension proceeding No. 4736 whereby A. E. Staley Manufacturing Company was committed to the continued discrimination of being required to pay a $2.50 per car spotting charge without parallel in any industry. This charge had been established November 15, 1937 (R. 381, 865); and the plaintiff railroads in vain had sought leave to withdraw the tariff in order that the Staley Company may have the same switching services which they accord all other industries under the established freight rates.

The validity of the Commission's aforesaid order can be and is questioned on many scores, any one of which questions deserves an answer which nullifies the assailed order. These questions are enumerated and developed in the brief of railroad appellees. This brief, which is presented on behalf of A. E. Staley Manufacturing Co., the object and victim of the Commission's order in this case, will raise two outstanding points

which involve the effect of the Commission's order upon the Staley Company in particular.

The first point is that the Commission acted arbitrarily when it compelled the carriers to institute and collect a spotting charge from Staley, while permitting them to refrain from making such charge from any other industry.

The second point is that the Commission erred and exceeded its statutory powers when it declared as a matter of law that transportation to and from the Staley plant at Decatur ends and begins in the railroad yards outside the Staley plant.

## STATEMENT

The brief of appellees will provide this Court with the prescribed full statement of the case; only undue formality would be served by paraphrasing that statement here. It is necessary in these pages only to state briefly the situation revealed by the detailed statements of the appellees as it affects the questions outlined above.

Many years ago the Staley Company received from the carriers an allowance for performance of work in spotting cars within its plant. The Commission declared this allowance to be unlawful, (215 I.C.C. 656) holding that the transportation obligation of the carriers under the freight rates ended at interchange tracks (since taken up) beyond which Staley performed the switching for which the allowance had been paid. The allowance was discontinued June 23, 1936. (R. 19)

Considerable changes were made in the physical facilities and freight switching methods at the Staley plant, and the Staley Company called on the carriers

to come in and perform the service of spotting. This the carriers did and continue to do, by one means or another, observing every suggestion of the Commission's staff as to methods. (R. 631-6) At this point, however, the Commission stepped in and compelled the carriers to make a separate and additional charge for the performance of the spotting service in delivering inbound and receiving outbound cars; and on November 15, 1937 a tariff was published providing a charge of $2.27 per car (later increased to $2.50) for placing shipments at loading and unloading points within the Staley plant. No similar charge was then or later established for any other plant at Decatur or anywhere else in the United States, regardless of the nature and extent of the service performed.

At the time this charge was initiated, both the Staley Company and the railroad companies believed it to be improper in all respects, and particularly because of the discriminatory feature involved in the fact that it applied only to Staley. Yet the Commission prevailed, and belittled the discriminatory character of the situation by promising to take appropriate action in the case of other industries including those which compete with Staley in the grain industry. The lengths to which the Commission went to assure all parties that it would actively and promptly equalize this situation by appropriate action throughout all similarly situated industries is illustrated by statements which it made at the time. (R. 638-9) When the Staley Company first sought to have the carriers do the spotting work, it filed a mandamus petition in the District Court at Springfield to that end. The petition was heard before Judge Briggle, a member of the lower court in this case.

The carriers appeared in reply to the petition and

stated that they would perform the service demanded but that Staley would have to pay extra. Staley Company pointed out there the prejudicial and unjustly discriminatory nature of such a course, but the Commission (which had intervened in the case) claimed exclusive jurisdiction over the issue raised by that complaint. The attorney for the Commission was asked by the Court how long it would be before the Commission would act, and he assured the Court that there would be no delay. This was on February 12, 1938. (R. 639)

Since then, a period of nearly seven years between the establishment of the charge against the Staley Company and the date of the lower court's decree in this case, the Commission took no active steps and made no further investigations looking either to general or specific adoption of such spotting charges at other plants. No hearings were had on such questions and no decisions dealt therewith. The Commission was idle. It let Staley wait, with diminishing confidence, for the promised action looking to equal treatment of industries in general, including Staley. The subsequent history of the matter shows occasions upon which Staley itself was before the Commission on hearing and appellants may suggest this constituted action. In reality it constituted only such action as was necessary to keep the Commission's heel squarely on the neck of the Staley Company, but without so much as a look in the direction of any other company.

Finally, the three appellee railroads, Wabash, Illinois Central and Illinois Terminal, sought to end the discrimination by canceling the charge. The cancellation was forbidden by the Commission's order of May 6, 1941. The railroad companies have now assailed that order and the Staley Company has intervened therein (R. 84-97) seeking relief from the unequal treatment

which it suffers in its role of "guinea pig" for the Commission's investigators.

The statutory three-judge Court holds that under such facts the Commission's order is invalid.

## SUMMARY OF ARGUMENT FOR INTERVENER

In the Court below and in this Court the Staley Company has not contended that the report and order condemning the allowance which was paid to the Staley Company prior to September 1936 was invalid. Nor has it attacked the broad principles and conclusions of the original report of the Commission in Ex Parte 104, Part II, announced May 14, 1935, 209 I.C.C. 11.

The Staley Company at all times has endeavored to make clear that if and when the railroads adopt a new plan of spotting charges, or if and when the Commission prescribes or brings about a fair plan of spotting charges (not necessarily of universal application), this company will of course submit to such charges along with other shippers. But to single out this industry as one of many in a highly competitive field and require it to be subjected to a tariff charge not imposed on any other industry,* further, to require continued exaction of such charge over a period of seven years of complete inaction by the Commission as to any other industries or any general plan, constitutes arbitrarily discriminatory administration of the law. The Commission is forcing the carriers concerned to violate the very law it is supposed to enforce.

Moreover, still accepting the prior decisions as to al-

* Every witness agreed that there is no other plant where any spotting charge is made by carriers. Testimony on pages 424, 505, 552 and 625 is illustrative. Government witnesses named no industry where such charge is in effect.

lowances, and guiding principles, this intervener directs the Court's attention to the manifest error in law of the Commission's assumption that as to grain traffic, which moves directly to and from the Staley elevator tracks, an indefinite (and inaccessible) point out in the operating yards of the Wabash Railway is to be regarded as the place of delivery. The requirements of grain inspection laws and the physical impossibility either of loading or unloading in such yards, or of gaining access to the cars, estop the Commission from such a decision. All other grain to all other shippers in Decatur (as elsewhere) is delivered, after government inspection, at the unloading chutes, under the compensation afforded by the freight rates. Consequently, although the Court will hold that the Commission has power to decide at what precise point transportation begins and ends under the freight rates, manifestly that decision in this case is arbitrary and beyond the Commission's power. It is as if the Commission said that, for Staley, the transportation ends out on the prairies of Illinois or at some distant station.

## ARGUMENT.

### I.

**The Commission has been guilty of "shocking discrimination" in its administration of the Act in this case.**

The opinion of the Court below clearly states the basis of its conclusion that the orders of the Commission have been working a discrimination against the Staley Company, which shocked the conscience of the Court (R. 134). The findings of fact upon which the opinion rests (R. 128-132) follow the history of the subject matter in detail and provide a clear exposition of the facts.

It requires no elaborate statement to demonstrate the administrative discrimination complained of. It consists of the singling out of Staley Company by the Commission as the starting point for a program of new and unprecedented spotting charges, followed by complete inactivity as to any other plants and utter abandonment of the program so far as equal treatment of all industry is concerned. This situation has lasted seven years and has become unbearable to Staley, which has heretofore held hope that the Commission would either retract or proceed. The court below found it shocking.

The judges by whom this decision was entered were familiar with the subject matter of these cases through their having sat in the prior cases involving allowances.*

* The decision of the District Court in the *Inland Steel Company case*, 23 F. Supp. 291 (affirmed 306 U. S. 153) was by Judge Sparks, Wilkerson and Lindley; the decision in the *Goodman Lumber Company case* (affirmed 301 U. S. 669) was by Judge Evans, Geiger and Barnes; the decision in *Keystone Steel and Wire Allowance case* was by Judges Briggle, Evans and Page. So that Judges Evans, Lindley and Briggle were fully conversant with the governing decisions of this Court in *American Sheet & Tin Plate case*, 301 U. S. 402.

Indeed, Judge Lindley and Briggle had joined in upholding decisions of the Commission condemning allowances at other specific industries, as had Judge Evans, who dissented from the opinion but not the findings (R. 143) of the Court below in this cause. From such approving views of the Commission program these judges were moved to complete disapproval by the shocking discrimination they found in this case.

The appellants attempt in their brief to explain this away in 17 pages of argument. First, they characterize the ruling below as having the effect of holding that

> "where the Commission discovers a prohibited rebate granted a particular industry, it cannot, under conceded authority, take action to stop it until every other rebate, claimed as similar and made to competing, industries, is *simultaneously* stopped by the Commission's action taken on its own motion." (Italics ours.)

Several pages ring the changes on this theme, and appellants seek to put Staley in the ridiculous role of murderer who complains that he should not be hanged until all other murderers are brought to justice.

Of course the Court below intended no such sweeping announcement and the opinion and decree are of no such effect.

When the Court spoke, for more than six years Staley had paid this charge while no one else did, big or small. We submit there is quite a difference between requiring "simultaneous" action against all industries, and objecting because no action is taken nearly seven years after the first "sample" spotting charge.

Next the appellants argue that they merely pointed the way in the Staley case which was to provide a

"sample" and that it was the duty of the carriers to follow up at other plants. They admit:

> "That some inequality may result from this order and from the fact that other cases have not been decided by the Commission—,"

but it is argued that the carriers should have taken the initiative to put in spotting charges elsewhere, or failing that, Staley should have filed a complaint.

It is no answer to a charge of dereliction of duty that "George should have done it", and it does not become counsel for the Interstate Commerce Commission to argue that unequal treatment of shippers has resulted from non-cooperation of the railroads. The argument begs the question, which is whether the Commission may consciously remain complacent to unequal treatment when the initial inequality was brought about by its own order.

The next part of appellants' explanation has to do with the supposed enormity of the task of putting in spotting charges everywhere that the Commission may think they should be made. That problem was no less present prior to 1937 than it is present today; and only Staley has been subjected to a charge! On the other hand, the Government brief reveals no activity by the Commission in dealing with spotting charges at other plants, or as a general plan. The record shows the very considerable amount of time and work of inspectors, examiners and commissioners during the years 1937-43, going after the Staley Company, studying conditions at its plant and forcing reluctant carriers to continue the charge. But the record is silent on any efforts to investigate other industries—for there had been none. Extreme diligence to hold Staley—extreme unconcern with any other industry.

Attached to the brief for appellants is a list of decisions entitled "Citations of Ex Parte 104-II, and supplements thereto," which at first glance would create the appearance the Commission has been reasonably active. The Court will discover, however, that of the numerous decisions which are listed, the first sixty cases preceded the date of establishment of the Staley spotting charge, November 15, 1937. Since that date there has not been a single decision of the Commission (except Staley decisions) dealing with spotting *charges;* all of the subsequent decisions have dealt with *allowances,* either to sawmills (seven of them) or steel plants (three in number) and one meat packer. The last five cases listed in the appendix to the Government brief are only tentative reports, with orders to show cause attached thereto, and these deal with allowances to steel plants. Accordingly, the list of activities in the appendix of the Government brief shows that right down to date the Commission has not done a thing towards spotting charges anywhere but at the Staley plant.

It is true that subsequent to the decree of the lower court herein, the Commission has entered upon certain hearings as to conditions at certain other selected plants, a fact to which we would hesitate to allude were it not for the incorporation by appellants' counsel as an appendix to their brief of extracts from the recent 57th Annual Report of the Commission. That extract and the fact of recent hearings the appellants will cite as evidence of their good faith in proceeding with the promised program looking toward equal treatment under the law. To Staley, and to the lower court which heard the same old story seven years ago, it has a hollow ring and only emphasizes the failure of the Commission to do anything about the matter.

Why has the Commission done nothing? Why has it not at least forced a spotting charge on one or two other industries (competing or non-competing), if only to make clear that there is nothing personal or unique in the Staley situation? A spotting charge could have been compelled at a few more plants as easily as against the Staley Company, and we may wonder that the Commission did not use several "samples", if only for clarification of its intentions.

Appellants explain at length that they expected the railroads to "cooperate" and extend the spotting charge idea. The fact is that the idea was not extended; for some reason it did not catch, and the Commission has watched the spark for seven years without action. "This was not a full discharge by the Commission of an immediate responsibility." *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 409.

## II.

**The Commission erred as a matter of law in declaring that transportation ends outside the Staley plant.**

Previous decisions in related cases have expressed clearly the principle that the Commission has the power, on a proper record, to decide what constitutes a reasonably convenient place for receipt and delivery of freight at a plant like that of the Staley Company. Appellants make the most of that principle, and we do not dispute either its existence or its wisdom. But it is important to keep the thinking clear on the point. The stated principle obviously does not mean that the Commission may arbitrarily assign any point, or unnecessarily prescribe a manifestly ridiculous place as the beginning and end of the carrier's transportation obliga-

tion. Yet that is what they have done in this case. Relying on the reasonable provisions of the law, they have given it an unreasonable twist. We find this error made manifest by the effect which it has upon the grain traffic.

Section XIV of the intervention of the Staley Company (R. 37) describes this phase of its operations and presents a glaring example of the illegality of the carriers' practice required by the Commission's order, namely the imposition of a placement charge on shipments of grain, for moving the cars from the Railway general yards to tracks just within the plant, approaching the elevator.

This section of the petition is supported by the record, shows that the Staley Company operates in its plant at Decatur large grain elevators in which it conducts a merchant elevator business, receiving, storing, treating and handling grain which is moved inbound and outbound in both state and interstate commerce, for account of the divers owners of said grain. These elevators are served by four parallel tracks suitably laid out for the handling of carloads containing shipments of grain. Car pullers are provided by Staley Company whereby Staley spots the cars at its own expense and at its own convenience under the chutes and apparatus for loading and unloading. The service by the carriers consists only of placing strings of inbound cars on the tracks approaching the elevator and removing loaded and empty cars from the tracks, in the simplest and most economical manner. (R. 255-7, 622)

Under the laws of the State of Illinois and of the United States.* grain moving by railroad has to be

* Illinois Constitution of 1870, Article XIII; Smith-Hurd Ill. Ann. Stat., Ch. 114, Sec. 111, *et seq.*; U. S. Code Ann., Title 7, Ch. 3, U. S. Grain Standards Act approved August 11, 1916. See appendix to this brief.

inspected at market points and destinations, such as Decatur, and such inspection, by common custom and practice and according to law, is made at points designated by the railroads on tracks in the railroad yards.

In accordance with this law, all carload shipments of grain moving into the City of Decatur move in trains indiscriminately to the railroad yards, and after inspection in said yards the grain is moved on by the carrier to the elevator or unloading dock of the consignee. This subsequent movement is performed in the City of Decatur for and to all elevators, plants and unloading points free of any charge other than the established freight rate, excepting if it moves to the aforesaid elevators of the Staley Company, in which case the charge of $2.50 has been imposed.

The statutes of the United States and of the State of Illinois in essence require two things of the railroads on their grain traffic, *inspection* of the grain by government inspectors in railroad cars and *delivery* of the grain for unloading at the elevators. To hold, as the Commission does in its broad conclusions in this case, that grain shipments moving to the Staley elevator in Decatur are *delivered* out in the Wabash terminals, is to require violation of the express terms of the state and Federal Statutes.

The Grain Standards Act, U. S. Code Ann. Title 7, Ch. 3, provides for grades and inspections, cooperative action with the states and use of state inspectors.* The Illinois Law, Ch. 114, Smith-Hurd Ann. Stat., pursuant to Article XIII of the Constitution of 1870 affirmatively requires the railroads of Illinois to deliver grain at warehouses and elevators and to take the grain from ele-

* Pertinent provisions are set forth in appendix to this brief.

vators and warehouses, on whatever tracks located, if accessible to railroad engines; and it provides for inspection of grain while in railroad possession.

All grain moving into and out of Decatur to any and all elevators is inspected and the railroads deliver it and take it from the various elevators. The Commission's decision attempts to hold that movements from railroad yards to the Staley elevators are not transportation and requires an accessorial charge therefor which seems plainly in violation of the statutes.

The facts of this situation bring the case clearly within the law as determined in *Great Northern Railway Company* v. *Merchants Elevator Company*, 259 U. S. 285.

That case involved construction and interpretation of railroad tariffs and it was held that preliminary resort to the Commission was not essential to support the jurisdiction of the Court. The point of the case which is important here is its recognition of the controlling force and effect of the grain inspection laws of the United States and of the State of Minnesota, the latter analogous to Illinois laws. And that *delivery* of grain is not even constructively accomplished at the point of inspection, the true destination being the elevator where the grain is to be unloaded.

As the facts are set forth in the opinion of the Court, written by Mr. Justice Brandeis, the railroad sued for a charge of $5.00 per car on 16 cars of corn which had been shipped from Iowa and Nebraska stations to Willmar, Minn., and after inspection there rebilled to Anoka. The tariff rate from origin stations was the same to Willmar as to Anoka, and Willmar had been named as destination in the original bill of lading only because it is the place at which grain coming into the

State by this route is inspected and graded under the laws of Minnesota and of the United States.

The tariff rules involved in that case are substantially in force today at Decatur, and to the same effect; and the charge was held to be in violation of the tariff rule. The inspection points for grain in the railroad yards of Decatur can no more be regarded as the destination or marking the end of the transportation service than could be the inspection point of Willmar, Minn., on traffic to the elevators at Anoka. The Decatur Milling Company and all other consignees in Decatur have their grain placed opposite their unloading chutes, subsequent to the official inspection, without question that the transportation obligation of the carrier comprehends such delivery.

## CONCLUSION.

The brief for appellants seems to attack all railroads vigorously as natural born rebaters. It adopts something of a defeatist tone as it excuses Commission inaction by the plea that the railroads were uncooperative and unsympathetic toward the spotting charge idea:

> "they could, if they were willing to cooperate, establish tariffs providing for equality of charges * * *"

This is a new tone to find in a brief for the Commission. Fifty years ago the railroads may have been a rough lot; today this Court will judicially notice the generally cooperative spirit of their managements. Why, then, don't they cooperate in this matter?

We perceive that the whole idea is recognized by the carriers as being unworkable, unwise and revolutionary. Whether it is that or not we do not argue, and this Court is not called upon to decide. The interesting fact is that the Commission seems to realize that such view is widely held. We suggest that this realization is the real explanation for the Commission's inaction. If they were to force the establishment of spotting charges at more than the one, relatively helpless, shipper the lid would be blown off. Shippers and carriers generally would find themselves involved in the program with a vengeance. And if the Commission's fears are founded, the public opinion would be against it. It is not too much to suppose that opinion would reach congressional halls and result in decisive action there. The Commission works for Congress. It is treading on thin ice, which it sensed to be cracking.

This is perhaps speculation, but it is speculation of a kind that this Court will inevitably consider in its dis-

cerning thinking. It explains realistically the Commission's otherwise inexplicable treatment of this shipper. No speculation whatever is involved in observing the emphasis which the charge of widespread rebating places upon the discrimination involved in making the Staley Company pay a charge for placing cars at its elevator and other points of loading or unloading over these seven long years, to the tune of approximately $80,000, a year (R. 286) while the Commission has done nothing to bring about imposition of a like charge at any plant of competitors or others.

Intervener submits that no error has been shown in the findings of fact unanimously adopted by the Court below and that such findings and the conclusion of law thereon are correct, *wherefore* the decree should be affirmed and the matter remanded for such further relief as the Court below may find appropriate.

Respectfully submitted,

C. C. LeForgee,
Luther M. Walter,
Nuel D. Belnap,
John S. Burchmore,
*Solicitors for Intervener-Appellee.*

March 4, 1944.

# APPENDIX.

## The Grain Standards Act, U. S. Code Ann. Title 7, Chapter 3.

Sec. 76. Compulsory use of official standards; exceptions; inspection and grading after shipment; appeal.

Whenever standards shall have been fixed and established under this chapter for any grain no person thereafter shall ship or deliver for shipment in interstate or foreign commerce any such grain which is sold, offered for sale, or consigned for sale by grade unless the grain shall have been inspected and graded by an inspector licensed under this chapter and the grade by which it is sold, offered for sale, or consigned for sale be one of the grades fixed therefor in the official grain standards of the United States: *Provided,* That any person may sell, offer for sale, or consign for sale, ship or deliver for shipment in interstate or foreign commerce any such grain by sample or by type, or under any name, description, or designation which is not false or misleading, and which name, description, or designation does not include in whole or in part the terms of any official grain standard of the United States: *Provided further,* That any such grain sold, offered for sale, or consigned for sale by grade may be shipped or delivered for shipment in interstate or foreign commerce without inspection at point of shipment by an inspector licensed under this chapter, to or through any place at which an inspector licensed under this chapter is located, subject to be inspected by a licensed inspector at the place to which shipped or at

some convenient point through which shipped for inspection, which inspection shall be under such rules and regulations as the Secretary of Agriculture shall prescribe, and subject further to the right of appeal from such inspection, as provided in section 78 of this chapter: *And provided further,* That any such grain sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards may, upon compliance with the rules and regulations prescribed by the Secretary of Agriculture, be shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under this chapter to a place at which there is no such inspector, subject to the right of either party to the transaction to refer any dispute as to the grade of the grain to the Secretary of Agriculture, who may determine the true grade thereof. No person shall in any certificate or in any contract or agreement of sale or agreement to sell by grade, either oral or written, involving, or in any invoice or bill of lading or other shipping document relating to, the shipment or delivery for shipment, in interstate or foreign commerce, of any grain for which standards shall have been fixed and established under this chapter, described, or in any way refer to, any of such grain as being of any grade other than a grade fixed therefor in this official grain standards of the United States.

---

Illinois Statutes, Chapter 114 Railroads and Warehouses:

Sec. 111. Receipt and carriage of grain without distinction.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

That every railroad corporation, chartered by or

organized under the laws of this state or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and load the same either upon its track, at its depot or in any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned. • • • • •

Sec. 112. Delivery—Penalty.

Every railroad corporation which shall receive any grain in bulk for transportation to any place within the state, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed: Provided, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grains as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. • • •

**Illinois Constitution of 1870.**

**Articles XIII Warehouses:**

**Sec. 1. Grain elevators as public warehouses.**

**All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.**

**Sec. 5. Railroads, delivery of grain—Track connections.**

**All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.**

**Sec. 7. Grain, inspection of.**

**The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.**